

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Thomas Juliano	Team: Squad #13	CCRB Case #: 201907416	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 08/13/2019 12:06 PM	Location of Incident: A - Line subway station located at the North East Corner of Beach 67th Street and Rockaway Freeway	Precinct: 100	18 Mo. SOL 2/13/2021	EO SOL 9/30/2021	
Date/Time CV Reported Wed, 08/21/2019 9:52 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 08/21/2019 9:52 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Mayra Ramirez	12727	965441	TB DT23
2. POF Tchekie Mars	22239	952894	TB DT23

Officer(s)	Allegation	Investigator Recommendation
A.POF Tchekie Mars	Abuse: Police Officer Tchekie Mars damaged § 87(2)(b)'s property.	
B.POF Tchekie Mars	Force: Police Officer Tchekie Mars used physical force against § 87(2)(b)	
C.POF Mayra Ramirez	Force: Police Officer Mayra Ramirez used physical force against § 87(2)(b)	
D.POF Tchekie Mars	Force: Police Officer Tchekie Mars used pepper spray against § 87(2)(b)	
E.POF Tchekie Mars	Force: Police Officer Tchekie Mars used a chokehold against § 87(2)(b)	

### Case Summary

On August 21, 2019, § 87(2)(b) filed this complaint with the CCRB over the phone.

On August 13, 2019, at 12:06 p.m., § 87(2)(b) entered the A line subway station, located at the intersection of Beach 67<sup>th</sup> Street and Rockaway Freeway in Queens, without paying his fare. PO Tchekie Mars and PO Mayra Ramirez of Transit District 23 stopped § 87(2)(b). PO Mars damaged § 87(2)(b)'s property (**Allegation A: Abuse of Authority**, § 87(2)(g)). PO Mars and PO Ramirez pulled § 87(2)(b) to the floor (**Allegations B and C: Force**, § 87(2)(g)). PO Mars pepper sprayed § 87(2)(b) (**Allegation D: Force**, § 87(2)(g)). PO Mars placed § 87(2)(b) in a chokehold (**Allegation E: Force**, § 87(2)(g)). § 87(2)(b) was arrested and charged with § 87(2)(b) (**Board Review 01**). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

BWC footage from seven officers, including PO Mars and PO Ramirez, captured this incident. The footage can be found in IAs #41-53, and summaries of the footage can be found in IA #54 (**Board Review 03**). § 87(2)(b) provided a cellphone video of this incident, which can be found in IA #9, and a summary of the footage can be found in IA #18 (**Board Review 04**).

### Findings and Recommendations

**Allegation A – Abuse of Authority: Police Officer Tchekie Mars damaged § 87(2)(b)'s property.**

**Allegation B – Force: Police Officer Tchekie Mars used physical force against § 87(2)(b)**

**Allegation C – Force: Police Officer Mayra Ramirez used physical force against § 87(2)(b).**

§ 87(2)(b) said he entered the subway station with his friend, § 87(2)(b) and asked an MTA employee in the transit booth if he could get on the train for free. The MTA employee opened the emergency exit gate for him. After walking through the gate, PO Mars and PO Ramirez stopped § 87(2)(b) for fare evasion. PO Mars asked for § 87(2)(b)'s identification three times, and each time § 87(2)(b) refused to provide his ID as he felt he should not have been stopped because the MTA employee gave him permission to enter. However, he eventually provided his work identification to PO Mars. PO Mars ordered § 87(2)(b) to step to the side and § 87(2)(b) refused to comply. § 87(2)(b) told the officers, “I shouldn’t even talk to you. I should just keep going,” while putting a foot on the first step of the staircase leading up to the platform. During his CCRB interview, § 87(2)(b) said his statement in conjunction with his action of stepping onto the staircase may have made it look like he was attempting to walk away from the officers, though that was not his intention and he “messed up” by arguing with the officers and making it seem as if he was going to walk away from them.

PO Mars ordered § 87(2)(b) to stop moving and grabbed § 87(2)(b)'s hoodie by the front pocket, causing it to tear. PO Ramirez grabbed § 87(2)(b)'s right arm and the officers attempted to pull § 87(2)(b)'s arms behind his back to place him in handcuffs. § 87(2)(b) pulled his arms away from the officers. One of the officers squeezed § 87(2)(b)'s wrist, aggravating a preexisting injury. § 87(2)(b) instinctively pulled his arms away from the officers and held them up over his head with his fists clenched. During his CCRB interview, § 87(2)(b) said his stance may have made it appear that he was going to strike the officers, though that was not his intention. PO Mars pepper sprayed § 87(2)(b) (See Allegation D.) The pepper spray made it difficult for him to see and breathe. § 87(2)(b) continued to pull away from the officers and walked up the stairs toward the platform; however, § 87(2)(b) “did not know what he was doing” as he was in pain from the pepper spray and could not focus. He said he was not intentionally trying to flee. PO Mars and PO Ramirez pulled § 87(2)(b)'s arms behind his back. Approximately eight additional

officers arrived, and all the officers pulled § 87(2)(b) to the floor where his arms were pulled behind his back and he was handcuffed (**Board Review 05**).

In PO Mars' BWC footage, at the 00:40 mark of the video player, visible at the bottom of the screen, § 87(2)(b) tells the officers that he should have ran from them. § 87(2)(b) requests his ID back and attempts to take it from PO Mars. She repeatedly orders him to step back and § 87(2)(b) tells her that he will not back up. At 02:31, § 87(2)(b) begins walking up the stairs toward the train platform. PO Ramirez orders § 87(2)(b) to stay. § 87(2)(b) asks why. PO Ramirez says he did not pay his fare, and that if he does not comply, he will be arrested. At 02:46, § 87(2)(b) continues to walk up the staircase while placing his left hand behind his back near his rear pants pockets. PO Mars orders § 87(2)(b) not to reach into his pocket. § 87(2)(b) tells PO Mars that he can do whatever he wants. PO Mars orders § 87(2)(b) to turn around and approaches him. § 87(2)(b) does not turn around, moves his hands away from the officers, and walks further up the staircase. At 02:57, PO Ramirez approaches § 87(2)(b) and grabs his left arm. § 87(2)(b) backs further up the stairs and tells the officers "Don't touch me." PO Mars grabs § 87(2)(b)'s hoodie by the front pocket and pulls § 87(2)(b) down the stairs. § 87(2)(b) descends the stairs and remains standing. PO Mars and PO Ramirez pull § 87(2)(b)'s arms toward his back as he holds them together in front of him. The video does not capture whether § 87(2)(b)'s hoodie is damaged (**Board Review 06**).

PO Mars' BWC is contained within two videos. According to the embedded timestamps, 16 seconds elapsed between the two BWC videos. Cellphone footage provided by § 87(2)(b) shows that PO Mars pepper sprayed § 87(2)(b) during this period (See allegation D).

PO Mars' second BWC video begins with PO Mars and PO Ramirez ordering § 87(2)(b) to stop resisting while § 87(2)(b) attempts to pull his arms away from the officers. § 87(2)(b) says his face burns and tells the officers to get off him. At the 00:45 mark of the video player, visible at the bottom of the screen, the officers attempt to place § 87(2)(b)'s wrist in handcuffs. However, § 87(2)(b) pulls his arms away from the officers and attempts to walk up the stairs and kicks in the direction of the officers, though the video does not capture whether § 87(2)(b)'s feet make contact with the officers. At 00:52, PO Mars and PO Rivera pull § 87(2)(b)'s still-not-handcuffed wrists and § 87(2)(b) falls backward onto the floor. Additional officers arrive as § 87(2)(b) is sitting on the floor. Officers pull § 87(2)(b)'s arms behind his back and handcuff him (**Board Review 08**).

PO Mars said while § 87(2)(b) was stopped for fare evasion, he began walking up the stairs toward the train platform and she and PO Mars decided to place him under arrest. PO Ramirez grabbed § 87(2)(b) (PO Mars did not recall where) and she and PO Ramirez attempted to pull § 87(2)(b)'s arms behind his back to handcuff him. However, § 87(2)(b) "flailed" his arms and legs. PO Mars did not recall if she grabbed § 87(2)(b)'s sweater. PO Mars and PO Ramirez grabbed § 87(2)(b)'s arms and tried to pull them behind his back but were unsuccessful in placing him in handcuffs. § 87(2)(b) raised his fists above PO Mars' and PO Ramirez's heads, which made PO Mars fear that he was going to strike them. PO Mars pepper sprayed § 87(2)(b). After she deployed her pepper spray, § 87(2)(b) continued to flail his arms and dropped to the floor on his own. PO Mars did not recall any officer pulling § 87(2)(b) to the floor. Once on the floor, additional officers arrived, and everyone pulled § 87(2)(b)'s arms behind his back and handcuffed him (**Board Review 09**).

§ 87(2)(g) PO Ramirez did not recall if § 87(2)(b) was on the floor, but said no officer pulled him to the floor (**Board Review 10**).

NYPD Patrol Guide, Procedure 221-01 states that officers “will use only the reasonable force necessary to gain control or custody of a subject... In determining whether the use of force is reasonable, [officers] shall consider... actions taken by the subject... [and the] immediacy of the perceived threat or harm to the subject, [officers], and/or bystanders” (**Board Review 12**).

§ 87(2)(g)

§ 87(2)(g)

**Allegation D – Force: Police Officer Tchekie Mars used pepper spray against § 87(2)(b)**

§ 87(2)(b) said that PO Mars raised her pepper spray and deployed it into his right eye from approximately two centimeters away from his face.

§ 87(2)(b) provided a cellphone video recorded by § 87(2)(b). The video starts with PO Mars and PO Ramirez holding § 87(2)(b) against a railing. § 87(2)(b) tells the officers to get off him and attempts to break free from the officers by pushing through them. At the 00:12 mark of the video player, visible at the bottom of the screen, § 87(2)(b) pulls his arms away from the officers and raises both hands with closed fists above the officers’ heads. PO Mars puts her pepper spray canister less than one foot away from § 87(2)(b)’s face and deploys her pepper spray into his eyes (**Board Review 07**).

PO Mars said that she removed her pepper spray, put it “inches” (PO Mars could not estimate how many inches) away from § 87(2)(b)’s face, and sprayed § 87(2)(b) in his eyes, in an approximate one-second burst. PO Mars deployed her pepper spray to gain compliance as § 87(2)(b) was resisting. PO Mars was aware that the Patrol Guide specifies a minimum distance at which pepper spray needed to be deployed, but she did not know what the distance was.

NYPD Patrol Guide, Procedure 221-07 states that officers can use pepper spray to gain control of persons who are actively resisting arrest and to establish control of a subject attempting to flee from arrest or custody. Officers are to discharge the pepper spray into the subject’s eyes at a minimum distance of three feet (**Board Review 11**).

§ 87(2)(g)

§ 87(2)(g)

**Allegation E – Force: Police Officer Tchekie Mars used a chokehold against § 87(2)(b)**

The cellphone video provided by § 87(2)(b) captures the moments following PO Mars pepper spraying him. At the 00:12 second mark of the video player timestamp, visible on the bottom of the screen, § 87(2)(b) walks toward the train station stairs while PO Mars and PO Ramirez attempt to hold him back unsuccessfully. PO Mars holds § 87(2)(b) by reaching her left arm over § 87(2)(b)'s left shoulder from behind. At 00:28, as § 87(2)(b) attempts to get away from the officers, PO Mars' forearm crosses § 87(2)(b)'s neck (**Board Review 07**). § 87(2)(b) did not allege that he was placed in a chokehold during his CCRB interview.

PO Mars initially testified that § 87(2)(b) attempted to flee, and PO Ramirez grabbed § 87(2)(b). § 87(2)(b) flailed his arms, which caused PO Ramirez to fall to the floor. PO Mars grabbed § 87(2)(b) from behind, however, she did not recall if she placed her arm over § 87(2)(b)'s shoulder and denied placing § 87(2)(b) in a chokehold. Upon reviewing the cellphone video during her CCRB interview, PO Mars then acknowledged that the video captures her using a chokehold on § 87(2)(b) but she denied having an independent recollection of placing him in a chokehold. PO Mars did not intentionally place her arm on § 87(2)(b)'s neck. She attempted to stop him from fleeing and attempted to gain his compliance. PO Mars did not believe that her arm was on § 87(2)(b)'s throat and did not believe that she applied pressure to § 87(2)(b)'s neck. § 87(2)(b) did not complain of an inability to breathe at any point during the incident (**Board Review 16**).

NYPD Patrol Guide, Procedure 221-01 states that officers shall not use a chokehold. A chokehold shall include, but is not limited to, and pressure to the throat or windpipe, which may prevent of hinder breathing or reduce intake of air (**Board Review 12**).

§ 87(2)(g)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 13**).
- PO Ramirez has been a member-of-service for two years and this is the first CCRB complaint to which she has been a subject.
- PO Mars has been a member-of-service for seven years and has been a subject in two additional CCRB complaints and three allegations, none of which were substantiated. § 87(2)(g)

**Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- As of December 13, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (**Board Review 14**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]



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Squad No.: 13

Investigator: Inv. Thomas Juliano      Inv. Thomas Juliano      10/6/2020  
Signature      Print Title & Name      Date

Squad Leader: \_\_\_\_\_  
Signature      Print Title & Name      Date